

CARLA D. BOTNER

IBLA 71-191

Decided September 26, 1972

Appeal from decision (Anchorage 063973) by Alaska state office, Bureau of Land Management, rejecting application to purchase a headquarters site.

Set aside and remanded.

Alaska: Headquarters Sites -- Equitable Adjudication: Substantial Compliance

Equitable adjudication may be invoked to permit consideration of an application to purchase a headquarters site which was not filed within the time required where substantial compliance with the law is asserted and the delay is satisfactorily explained.

Withdrawals and Reservations: Effect of

The withdrawal imposed by Public Land Order 4582, as modified, terminated with the enactment of the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 688.

APPEARANCES: Carla D. Botner, pro se.

OPINION BY MR. FISHMAN

Carla D. Botner has appealed from a decision of the Alaska state office, Bureau of Land Management, dated January 15, 1971. The decision rejected her application to purchase a headquarters site under the Act of May 14, 1898, as amended, 43 U.S.C. § 687a et seq. (1970). The application was rejected for two reasons: 1) The land embraced within the claim was withdrawn from all forms of appropriation and disposition pursuant to Public Land Order 4582 of January 17, 1969, 34 F.R. 1025 (January 23, 1969), as amended by Public Land Order 4962 of December 8, 1970, 35 F.R. 18874 (December 11, 1970), and 2) The appellant failed to file her application to purchase within five

years after the date of filing her notice of claim as required by 43 U.S.C. § 687a-1 (1970), formerly 48 U.S.C. § 461a (1958), 43 CFR 2563.1-1(c) (1972).

The appellant filed her notice of location on November 22, 1965. Her application to purchase was filed on December 10, 1970, nineteen days late. Appellant states that she completed the improvements on her headquarters site within the five year period required by law, but attributes her late filing to a misunderstanding of critical dates. She states by way of explanation that she lost her records but had in her possession a form sent to her from the Anchorage land office which acknowledged her claim. The only date appearing on the form was January 14, 1966, and appellant mistakenly relied upon that date, computing the expiration date for filing her application to be January 13, 1971.

The withdrawal of public lands imposed by the public land orders referred to above no longer presents an obstacle to consideration of appellant's claim. Subsequent to the time of the decision below, Congress enacted the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688). The enactment of this legislation terminated the withdrawal. 1/

The Alaska Native Claims Settlement Act, supra, directs the Secretary to promptly proceed in cases of this kind. Section 22(b) provides:

The Secretary is directed to promptly issue patents to all persons who have made a lawful entry on the public lands in compliance with the public land laws for the purpose of gaining title to homesteads, headquarters sites, trade and manufacturing sites, or small tract sites (43 U.S.C. 682), and who have fulfilled all requirements of the law prerequisite to obtaining a patent. Any person who has made a lawful entry prior to August 31, 1971, for any of the foregoing purposes shall be protected in his right of use and occupancy until all the requirements of law for a patent have been met even though the lands involved have been

1/ See Public Land Order 5081 of June 17, 1971, 36 F.R. 12017 (June 24, 1971).

reserved or withdrawn in accordance with Public Land Order 4582, as amended, or the withdrawal provisions of Public Land Order 4582, as amended, or the withdrawal, provisions of this Act: Provided, That occupancy must have been maintained in accordance with the appropriate public land law: Provided further, That any person who entered on public lands in violation of Public Land Order 4582, as amended, shall gain no rights.

The failure of the appellant to file a timely application to purchase does not bar consideration of her application on its merits. Where, as in the present case, it appears that a claimant has substantially complied with the requirements of the headquarters site law, but has failed through an error arising out of ignorance, accident, or mistake, to file an application for patent within the five year statutory period, equitable relief may be afforded to consider the claim on its merits. 43 U.S.C. § 1161-1164 (1970); 43 CFR 1871.1. For cases reaching a similar result, see Elizabeth Hickethier, 6 IBLA 306 (1972), and C. Rick Houston, 5 IBLA 71 (1972) (trade and manufacturing sites); Juanita J. Anderson, 4 IBLA 170 (1971), and Ruth Gary, A-30329 (August 6, 1965) (homestead entries); Warrine F. Harden, 5 IBLA 194 (1972) (desert land entry).

The appellant has satisfactorily explained her failure to submit a timely application to purchase. The Bureau should, therefore, consider her application under the equitable adjudication provision of 43 CFR 1871.1 (1972).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals, 43 CFR 4.1, the decision appealed from is set aside and the case is remanded to the Bureau of Land Management for appropriate action in accordance with this decision.

Frederick Fishman
Member

We concur:

Douglas E. Henriques
Member

Joseph W. Goss
Member

